

BEFORE THE POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

METALCLAD INSULATION CORPORATION, )  
Appellant, )  
v. )  
PUGET SOUND AIR POLLUTION CONTROL )  
AGENCY, )  
Respondent. )

PCHB No. 91-75

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This is an appeal of Notice and Order of Civil Penalty issued by Puget Sound Air Pollution Control Agency ("PSAPCA") to Metalclad Insulation Corporation for alleged violation of air pollution control regulations concerning asbestos removal and disposal. A formal hearing was held on September 10, 1991 in Lacey, Washington.

Board Members Harold S. Zimmerman, presiding, and Annette S. McGee, were present. Appellant Metalclad Insulation Corporation was represented by Paul S. Haney, Asbestos Manager. Respondent PSAPCA was represented by Attorney Keith D. McGoffin of McGoffin & McGoffin (Tacoma). The proceedings were recorded by Gene Barker & Associates.

Opening statements were made. Witnesses were sworn and testified. Exhibits were admitted and examined. Closing arguments were made. From the testimony, exhibits and contentions of the parties, the Board makes these:

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(1)

1 FINDINGS OF FACT

2 I

3 PSAPCA is an activated air pollution control authority pursuant  
4 to State of Washington Clean Air. Chapt. 70.94 RCW. It is  
5 responsible for monitoring and enforcing emission standards for  
6 hazardous air pollutants, including work practices for asbestos.  
7 PSAPCA has filed with the Board certified copies of Article 4 of its  
8 Regulation III (including all amendments thereto).

9 The Board takes official notice of this Regulation III (as  
10 amended).

11 II

12 This matter concerns an asbestos removal project at 1201 Fourth  
13 Avenue in Seattle, King County, Washington. The asbestos project was  
14 being conducted by the appellant firm workers in the evening after  
15 employees in the office had left. This decision, to work at night,  
16 was the result of discussion by 22 people who believed it would cause  
17 least interruption and be safest at that time. These persons also had  
18 selected the northeast corner of the room as the location for the  
19 asbestos containing dump cart. There was a solid wall extending  
20 across the north and east side of the room. There were other  
21 structure divider posts, and a foot board indicating this storage area.

22 III

23 PSAPCA Inspector Marie A. Miller's first and only inspection of  
24

1 the project came at 10:30 a.m. on January 29, 1991, the final day of  
2 the project. Inspector Miller saw a dumpster in the northeast corner,  
3 that held asbestos containing material. He decided it was not  
4 isolated within a "controlled area."

5 IV

6 Inspector Miller took photographs of the area which he considered  
7 to be in violation. The photos showed a dump cart covered with  
8 visqueen. There were two signs on the dump cart that read "DANGER"  
9 with large letters "Asbestos" on the sign or poster. Metal studs, two  
10 sheets of plywood, a small step ladder and a large stepladder leaned  
11 against the structure of what appeared to be a room, and what appeared  
12 to be a doorway.

13 V

14 After completing the inspection, Inspector Miller telephoned  
15 Metalclad and told them he would be mailing a Notice of Violation  
16 alleging violation of Article 4 of PSAPCA Regulation III dealing with  
17 "controlled areas."

18 VI

19 On March 19, 1991, PSAPCA issued Notice and Order of Civil  
20 Penalty No. 7403 to the appellant for \$1,000 for the alleged violation  
21 of January 29, 1991.

22 VII

23 Prior to the asbestos removal project and the remodeling,  
24 "Egghead", the company which was to occupy the renovated area, called  
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1 a meeting of the general contractors, sub-contractors, and suppliers  
2 of materials to discuss the project. It was pointed out that the  
3 asbestos removal work would be done at night.

4 The asbestos work generally took from 6:00 p.m. to 5:00 a.m., but  
5 on the final night the work was completed at 2:00 a.m. Paul S. Haney,  
6 asbestos removal manager for Metalclad, Inc., said a barrier tape was  
7 placed across the threshold of the office area being used by Metalclad  
8 as the controlled asbestos area, and which was to be demolished the  
9 next day, which happened to be the day of the inspection.

#### 10 VIII

11 The dump cart was located against what was a solid wall behind it  
12 and alongside it. This was in the corner of a solid wall. There was  
13 a corner post and four other metal studs and a footboard along the  
14 bottom to form the area. The inspector did not enter this  
15 cornered-off area. When asked why he did not enter the area, he  
16 responded it would have been considered a "controlled area." He  
17 admitted it contained asbestos abatement and other tools.

18 The inspector spoke to no one about the area under consideration,  
19 except Mr. Jim Bray, a foreman for RBI, the main contractor on the  
20 remodeling project.

#### 21 IX

22 A barrier tape, which Mr. Haney said had been placed to warn  
23 people that the controlled area was not for access, had been removed  
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1 when Mr. Miller made his inspection. There was no explanation why it  
2 was removed.

3 X

4 Any Conclusion of Law deemed to be a Finding of Fact is hereby  
5 adopted as such.

6 From these Findings of Fact, the Board makes these

7 CONCLUSIONS OF LAW

8 I

9 The Board has jurisdiction over the subject matter and the  
10 parties. Chapter 43.21B RCW. The case arises under regulations  
11 implementing the Washington Clean Air Act, Chapter 70.94 RCW. PSAPCA  
12 has the burden of proof.

13 II

14 The Notice of Violation and Civil Penalty in this matter cites  
15 violation of Section 4.04(a)(4)(C): "Failure to contain  
16 asbestos-containing materials that have been removed or may have  
17 fallen off components during the course of an asbestos project in a  
18 controlled area at all times until transported to a waste disposal  
19 site."

20 For the alleged violation a civil penalty of \$1,000 was issued.

21 III

22 Based on our findings, we conclude that the area where the  
23 well-marked dump cart, with two "Danger Asbestos" signs, was located  
24

25  
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1 in the corner of a solid wall, with the framework for other walls,  
2 technically was not a controlled area as defined by the regulation,  
3 even though ladders and other asbestos abatement equipment were  
4 located there.

5 IV

6 The penalty assessed in the instant case was \$1,000. We are  
7 mindful that the civil penalties in question are principally intended  
8 not for retribution, but for the alteration of behavior. In light of  
9 the testimony heard, the evidence and exhibits presented, some degree  
10 of mitigation is appropriate.

11 V

12 Any Finding of Fact which is deemed a Conclusion of Law is hereby  
13 adopted as such.

14 From these Conclusions of Law, the Board enters the following  
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ORDER

The civil penalty is AFFIRMED, but \$800 is suspended, provided that appellant does not violate the State Clean Air Act or PSAPCA regulations for two years from the date of this order.

Done this 1st day of November, 1991.

POLLUTION CONTROL HEARINGS BOARD

  
HAROLD S. ZIMMERMAN, Presiding

  
ANNETTE S. M<sup>c</sup>GEE, Member

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